

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROBERT E. SCOTT	:	DETERMINATION
	:	DTA NO. 819113
for Redetermination of a Deficiency or for Refund of New York State and New York City Personal Income Taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the Year 1997.	:	

Petitioner, Robert E. Scott, 12187-007 RCI, P.O.Box 630, Winton, North Carolina 27986-0630, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the Administrative Code of the City of New York for the year 1997.

The Division of Taxation, by Barbara G. Billet, Esq. (Michelle M. Helm, Esq., of counsel), brought a motion dated December 5, 2002, seeking summary determination in the above-referenced matter pursuant to 20 NYCRR 3000.5 and 3000.9. Petitioner, appearing *pro se*, had 30 days, until January 5, 2003, to respond to the motion but did not do so, and the 90-day period for issuance of this determination commenced on such January 5, 2003 date. After due consideration of the evidence and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for refund for the year 1997.

FINDINGS OF FACT

1. Petitioner, Robert E. Scott, filed a New York State and City of New York Resident Income Tax Return (“Form IT-200”) for the year 1997. This return reported petitioner’s tax liability as zero, listed New York State and New York City income tax withheld in the respective amounts of \$176.96 and \$121.58, and requested a refund of the \$298.54 total of such withheld amounts. The return is signed by petitioner and is dated April 23, 2002. The envelope in which the return was filed bears the United States Postal Service postmark for Rocky Mount, North Carolina dated April 26, 2002.

2. By a letter dated August 8, 2002, the Division of Taxation (“Division”) denied petitioner’s claim for refund on the basis that it had not been filed within the period of limitations for filing such claims.

3. Petitioner challenged the refund denial by filing a petition with the Division of Tax Appeals. Petitioner does not dispute the Division’s position that his return for 1997 was filed on April 26, 2002. Petitioner attributes his failure to timely file such return to his ongoing relocations to different geographic areas in connection with maintaining his employment in the field of computer technology. Petitioner infers that the disruption attendant with such relocations should serve to excuse the lateness of his filing and allow his claim for refund to be granted.

CONCLUSIONS OF LAW¹

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

¹ Petitioner did not respond to the Division’s motion and the facts in this matter, as set forth in such motion papers and attached exhibits, are not in dispute. Accordingly, resolving this matter by summary determination pursuant to 20 NYCRR 3000.9(b) is appropriate (*Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316, 317).

Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later *If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim . . .* (emphasis added).

B. Tax Law § 687(e) provides in pertinent part:

No credit or refund shall be allowed or made . . . after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitation specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes paid under this article.

C. In light of the foregoing, a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later. There is no dispute that petitioner's overpayment of tax and his refund claim for the year 1997 resulted from the difference between the \$298.54 total amount of State and City tax withheld from petitioner's wage income for such year and his total 1997 State and City income tax liability of zero. All such withholding tax is deemed to have been paid by petitioner on April 15, 1998 (*see*, Tax Law § 687[i]), and there is no claim or evidence that any payments of tax for 1997 were made by petitioner at any time after April 15, 1998. Since petitioner's April 26, 2002 refund claim was not filed within two years of the April 15, 1998 date on which the tax was paid, the three-year period specified in Tax Law § 687(a) is applicable in this case.

D. Where the three-year period is applicable, there are two limitations to consider. First, in order to be timely filed, the refund claim must be filed within three years from the time the return was filed. Second, the dollar amount of refund allowable may not exceed the portion of the tax paid within the three-year period immediately preceding the filing of the refund claim.

With regard to the first limitation, it is undisputed that petitioner's return for the year 1997, on which the requested refund was claimed, was filed on April 26, 2002. Since the claim for refund was filed on the same date and as part of the filing of petitioner's return, it was thus not filed late. However, the second limitation precludes petitioner from obtaining a refund. That is, all of the tax at issue in this case was deemed paid on April 15, 1998, but petitioner's refund claim was not filed until April 26, 2002. Accordingly, the amount of refund allowable is zero, because no portion of petitioner's overpayment was paid within the three years immediately preceding the filing of the refund claim. Thus, the Division properly denied petitioner's claim pursuant to Tax Law § 687(a).

E. Tax Law § 687 is explicit as to the applicable time limitations within which a claim for refund must be filed and the dollar amount of refund which may be granted (Tax Law § 687[a]), as well as in the strict preclusion of refunds for claims filed and amounts paid outside of such time limitations (Tax Law § 687[e]). Unfortunately, petitioner's claim is not within the limitations specified by Tax Law § 687.

F. The Division's Motion for Summary Determination is granted, the petition of Robert E. Scott is hereby denied, and the denial of petitioner's claim for refund for the year 1997, dated August 8, 2002, is sustained.

DATED: Troy, New York
February 13, 2003

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE